

FRANK J. UXA, JR.\*  
ROBERT D. BUYAN\*\*  
DONALD E. STOUT  
KENTON R. MULLINS  
JO ANNE M. YBAGEN  
KATEN S. VAKIL  
LINDA ALLYSON FOX  
KYLE D. YESLAND, Ph.D.  
GREG S. HOLLRIEGEL, Ph.D.\*\*  
LOUISE S. REIM\*\*

LAW OFFICES OF  
**STOUT, UXA, BUYAN & MULLINS, LLP**

4 VENTURE, SUITE 300  
IRVINE, CALIFORNIA 92618  
(949) 450-1750  
FACSIMILE: (949) 450-1764

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GORDON L. PETERSON (Retired)

\*PROFESSIONAL CORPORATION  
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## FACSIMILE COVER SHEET

Date: October 25, 2002

To: **Commissioner for Patents  
Washington, D.C.**

Facsimile: 703-305-3579

Re: U.S. Patent Application No. 09/708,923  
Applicant: Joshua Makower, et al.  
Title: Methods and Apparatus for Bypassing Arterial Obstructions and/or Performing  
Other Transvascular Procedures

From: Robert D. Buyan

Total Number of Pages: 3 (including this form). Please notify us immediately if you have not received all pages.

Message:

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Name of person sending facsimile: Francine Sanders, Assistant to Robert D. Buyan

Signature: 

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Joshua Makower	)	
	)	Art Unit: 3738
Application No. 09/708,923	)	
	)	Examiner: Isabella, David J.
Filed: November 8, 2000	)	
	)	
For: Methods and Apparatus for	)	
Bypassing Arterial Obstructions and/or	)	
Performing Other Transvascular	)	
<u>Procedures</u>	)	

Commissioner for Patents  
Washington, D.C. 20231

**RESPONSE TO OFFICE ACTION DATED SEPTEMBER 25, 2002**

Dear sir:

Applicant hereby responds to the restriction requirement office action dated September 25, 2002.

The Office Action indicates incorrectly that Claims 1-92 are pending in the case. In actuality, the continuation transmittal included a preliminary amendment voluntarily canceling Claims 60-92 and the filing fee was paid on the basis of Claims 1-59 only. Thus Claims 1-59 are currently pending.

Applicant provisionally elects to prosecute the claims of Group I (Claims 1-19). Applicant respectfully traverses the restriction requirement insofar as Groups I and II have been deemed to be subject to restriction from one another. The applicable regulations require that two (2) criteria be met in order for a restriction requirement of this type to be proper. Those criteria are as follows:

(A) The inventions must be independent (see MPEP §§ 802.01, §§ 806.04, §§ 808.01) or distinct as claimed (see MPEP 806.05 - §§ 806.05(i)); and

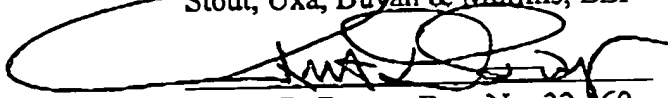
Applicant: Joshua Makower  
Serial No.: 09/708,923  
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examiner (see MPEP §§ 803.02, §§ 806.04(a) - §§ 806.04(i), §§ 808.01(a), and §§ 808.02).

Applicant believes that the claims of Group II (Claims 20-31) are sufficiently similar to certain of the dependent claims within Group I that the Examiner could examine Groups I and II concurrently without "serious burden." For example, dependent claims 17-19 specifically recite the use of a passageway forming catheter to carry out the method of Claim 1 while independent Claim 20 recites a method for coronary revascularization using a passageway-forming catheter. Given the fact that the Examiner will be searching and examining dependent Claims 17-19 as part of Group I, the additional searching and examining of Group II (Claims 20-31) would not greatly increase the burden on the Examiner. Accordingly, Applicant respectfully requests that Group II be combined with Group I and that Claims 1-31 be examined.

No fee is seen to be due in connection with this response/amendment. However, in the event that any fee is properly deemed to be due, the Commissioner is hereby authorized to charge such fee to Deposit Account No.50-0878.

Respectfully submitted,  
Stout, Uxa, Buyan & Mullins, LLP



Robert D. Buyan, Reg. No. 32,460

Date: October 25, 2002

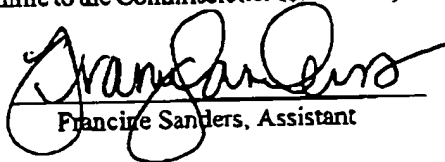
4 Venture, Suite 300  
Irvine, CA 92618  
Telephone:(949) 450-1750; Facsimile: (949) 450-1764  
email: rbuyan@patlawyers.com

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Dated: October 25, 2002

By:



Francine Sanders, Assistant